



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2011 REGULAR SESSION

SENATE BILL NO. 39

TUESDAY, FEBRUARY 8, 2011

The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED
DATE March 16, 2011
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ELAINE N. WALKER
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adles

1 AN ACT relating to state government contracts.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 14A.9-010 is amended to read as follows:

4 (1) A foreign entity shall not transact business in this state until it obtains a certificate
5 of authority from the Secretary of State.

6 (2) The following activities, among others, shall not constitute transacting business
7 within the meaning of subsection (1) of this section:

8 (a) Maintaining, defending, or settling any proceeding;

9 (b) Holding meetings of the board of directors, shareholders, partners, members,
10 managers, beneficial owners, or trustees or carrying on other activities
11 concerning the internal affairs of the foreign entity;

12 (c) Maintaining bank accounts;

13 (d) Maintaining offices or agencies for the transfer, exchange, and registration of
14 the foreign entity's own securities or maintaining trustees or depositaries with
15 respect to those securities;

16 (e) Selling through independent contractors;

17 (f) Soliciting or obtaining orders, whether by mail or through employees, agents,
18 or otherwise, if the orders require acceptance outside this state before they
19 become contracts;

20 (g) Creating or acquiring indebtedness, mortgages, and security interests in real,
21 personal, or intangible property;

22 (h) Securing or collecting debts or enforcing mortgages and security interests in
23 property securing the debts;

24 (i) Owning, without more, real or personal property;

25 (j) Conducting an isolated transaction that is completed within thirty (30) days
26 and that is not one (1) in the course of repeated transactions of a like nature;
27 and

1 (k) Transacting business in interstate commerce.

2 (3) The list of activities in subsection (2) of this section is not exhaustive.

3 (4) This section shall not apply to:

4 (a) Foreign limited liability partnerships; and

5 (b) Foreign general partnerships.

6 (5) This section shall not apply in determining the contacts or activities that may
7 subject a foreign entity to service of process or taxation in this Commonwealth or to
8 regulation under any other law of this Commonwealth.

9 (6) Notwithstanding any other law to the contrary, a foreign entity exempt under
10 paragraph (j) of subsection (2) of this section or subsection (4) of this section
11 shall obtain a certificate of authority from the Secretary of State under KRS
12 14A.9-030 to be eligible for award of a state contract under KRS Chapter 45A or
13 176.

14 ➔Section 2. KRS 45A.480 is amended to read as follows:

15 (1) (a) No state contract for building, construction, reconstruction, renovation,
16 demolition, or maintenance, or for any activity related to building,
17 construction, reconstruction, renovation, demolition, or maintenance shall be
18 awarded by any agency, department, or office of the Commonwealth of
19 Kentucky or any political subdivision of the Commonwealth of Kentucky to
20 any person until that person assures~~[shall assure]~~, by affidavit, that all
21 contractors and subcontractors employed, or that will be employed, under the
22 provisions of the contract shall be in compliance with Kentucky requirements
23 for workers' compensation insurance according to KRS Chapter 342 and
24 unemployment insurance according to KRS Chapter 341.

25 (b) An agency, department, office, or political subdivision of the
26 Commonwealth of Kentucky shall not award a state contract to a person
27 that is a foreign entity required by Section 1 of this Act to obtain a

certificate of authority from the Secretary of State under KRS 14A.9-030
unless the person produces the required certificate of authority within
fourteen (14) days of the bid or proposal opening.

(2) Any person who fails to comply with the assurances or to produce the certificate of authority from the Secretary of State required under subsection (1) of this section, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.

(3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

➔Section 3. KRS 176.085 is amended to read as follows:

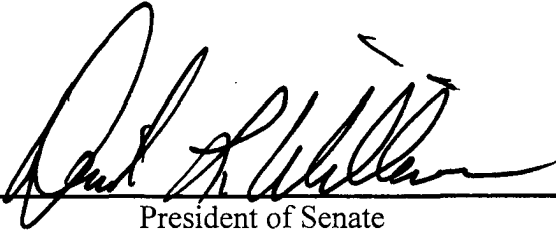
(1) (a) No contract for building, construction, reconstruction, renovation, demolition, or other type work on any state road, waterway, or aviation-related work, shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person shall assure, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.

(b) An agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a contract to a person that is a foreign entity required by Section 1 of this Act to obtain a certificate of authority from the Secretary of State under KRS 14A.9-030 unless the person produces the required certificate of authority within fourteen (14)

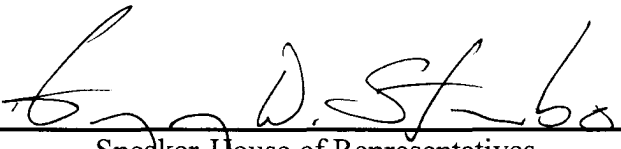
1 days of the bid or proposal opening.

2 (2) Any person who fails to comply with the assurances or to produce the certificate of
3 authority from the Secretary of State required under subsection (1) of this section,
4 upon such finding by a court of competent jurisdiction, shall be fined an amount not
5 to exceed four thousand dollars (\$4,000), or an amount equal to the sum of
6 uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342
7 and unemployment insurance claims for which no wages were reported as required
8 by KRS Chapter 341, whichever is greater.

9 (3) The penalty imposed in subsection (2) of this section shall be enforced by the
10 county attorney for the county in which the violation occurred.



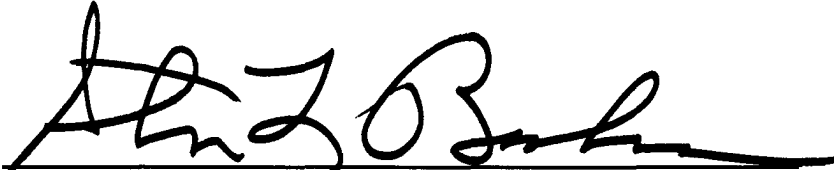
President of Senate



Speaker-House of Representatives

Attest: 

Chief Clerk of Senate

Approved 

Governor

Date 3-16-11